

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Case No.: 2:16-cv-02982-JAD-PAL

4 THAD AUBERT,

5 Plaintiff

6 v.

7 BRIAN WILLIAMS SR.,

8 Defendant

Order Dismissing Case

9 Plaintiff Thad Aubert submitted a letter to the court seeking clarification on some
10 conflicting advice he received from fellow inmates.¹ On February 5, 2018, I directed Aubert to
11 submit a complaint and to file a fully complete application to proceed *in forma pauperis* or pay
12 the \$400 filing fee by March 7, 2018.² I expressly warned him that his failure to comply with or
13 otherwise respond to this order would result in dismissal without further prior notice.³ The
14 deadline has passed, and Aubert has done neither.

15 District courts have the inherent power to control their dockets and “[i]n the exercise of
16 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
17 court may dismiss an action with prejudice based on a party’s failure to prosecute an action,
18 failure to obey a court order, or failure to comply with local rules.⁵ In determining whether to
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21 ¹ ECF No. 1 (letter).

22 ² ECF No. 3 (order).

23 ³ *Id.*

24 ⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

25 ⁵ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
26 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
27 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
28 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with
2 local rules, the court must consider several factors: (1) the public's interest in expeditious
3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
5 availability of less drastic alternatives.⁶

6 I find that the first two factors—the public's interest in expeditiously resolving the
7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action.⁷ The fourth factor is greatly outweighed by the factors in favor of
11 dismissal, and a court's warning to a party that his failure to obey the court's order will result in
12 dismissal satisfies the consideration-of-alternatives requirement.⁸ Aubert was warned that his
13 case would be dismissed without prejudice if he did not submit a complaint and file an
14 application to proceed *in forma pauperis* or pay the full filing fee.⁹ So, Aubert had adequate
15 warning that his failure to submit a complaint and to pay the fee or submit a completed
16 application would result in this case's dismissal.

17 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without
18 prejudice based on Aubert's failure to submit a complaint and to file an application to proceed *in*
19 *forma pauperis* or pay the full filing fee in compliance with this Court's February 5, 2018, order;
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24 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
25 *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 ⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 ⁸ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

28 ⁹ ECF No. 3 (order).

1 The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS
2 CASE.

3 DATED: 3-29-18

4 
U.S. District Judge Jennifer A. Dorsey